Court No.2

Second Appeal No.68 of 2002.

Basant Sarkar and another …. Appellants.

Versus

Nagar Panchayat Dineshpur,
District Udham Singh Nagar and
two others

….. Respondents.

…….

Hon'ble P.C.Verma,J.

This second appeal is listed for final hearing. Heard learned counsel for the appellants as well as Sri Sandeep Tandon, learned counsel for respondents Nos. 1 & 2.

The plaintiffs field a suit as residents of the locality against Nagar Panchayat, Dineshpur, District-Udham Singh Nagar seeking a decree of permanent injunction not raising any construction over the suit land. According to the plaintiffs, the suit land is a park over which no construction can be allowed to be raised in view of provisions of Sections 6 & 8 of the U.P. Parks, Playgrounds and Open Spaces (Preservations and Regulation) Act, 1975. The evidence was led by the parties before the trial court on the issue as to whether the suit land is a park or not. According to the trial court, it was a park but the trial court recorded this finding on the basis of oral evidence of the parties and on the basis of Khatauni filed by the plaintiffs as documentary evidence and when the Nagar Panchayat was created the Park is continuing after the creation of the Nagar Panchayat.

In appeal by the Nagar Panchayat, the appellate court allowed the appeal and set aside the order passed by the trial court and dismissed the suit. The appellate court has recorded a finding that there was nothing on record to shows that the land in question was a Park. The appellate court has given this finding after considering the entire evidence on record and

has also recorded that the finding recorded by the trial court was erroneous and was not passed on the relevant documents. There is no pleading in this second appeal that the park was notified under the Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975. The provisions of the said Act are attracted only in relation to those parks which are notified under the Act.

Therefore, no substantial question of law arises in this second appeal to be decided by this Court. The appeal is dismissed accordingly.

(P.C.Verma, J.)

23.10.2002
P.Singh